

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

APPROVED
BY THE BOARD AT ITS
MEETING HELD ON
SEPTEMBER 27, 2019

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**MINUTES
FOR THE MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, AUGUST 23, 2019
TIME: **9:15 A.M.**
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

MEMBERS

Suzanne Case
Jimmy Gomes
Stan Roehrig (9:40 am arrived)

Sam Gon
Chris Yuen
Tommy Oi

STAFF

Cindy Young/AG
Russell Tsuji/Land
Sam Lemmo/OCCL
Ed Underwood/DOBOR
David Smith/DOFAW

Alan Downer/SHPD
Barry Cheung/Land
Richard Howard/DOBOR

OTHERS

Cindy Young/AG
Ross Smith/DOT-Air
Marilyn Teague/C1, C2
Marie VonZandt/C1, C2

Lisa Keltley/C1, C2
Ficker Hunt/D1
Matt Stelmach/C1, C2
None Toledo/C1, C2

08.23.2019(1)/00:00:13

Chair Case called the meeting to order at 9:17 a.m. and read the standard contested case statement.

08.23.2019(1)/00:01:24

ITEM A-1 Request Approval of the May 24, 2019 Meeting Minutes.

Board Discussion

Yuen recused.

Public Testimony-None

MOTION

Approved as submitted (Gon, Gomes) 4-ayes: Case, Gon, Gomes, Oi.

08.23.2019(1)/00:28:32

ITEM A-2 Request Approval of the June 28, 2019 Meeting Minutes.

Board Discussion

Member Gon and Member Oi recused.

Public Testimony-None

MOTION

Approved as submitted (Yuen, Gomes) 4-Ayes Case, Gomes, Roehrig, Yuen.

08.23.2019(1)/00:02:01

ITEM A-3 Request Approval of the July 12, 2019 Meeting Minutes.

Board Discussion

Chair Case recused.

Public Testimony-None

MOTION

Approved as submitted (Gon, Gomes) 4-Ayes: Gon, Gomes, Oi, Yuen

08.23.2019(1)/00:02:21

ITEM I-1 Denial of Contested Case Petition from Dwight J. Vicente regarding the Enforcement Action against Edwin C. Olson Trust No. 2, Amauulu Camp Cemetery. Pu'u eo Ahupua'a, South Hilo, Island of Hawaii, Tax Map Key: (3) 2-6-008:028.

Alan Downer, State Historic Preservation Division, presented the submittal. Vicente not present.

Board Discussion

Member Gon recused.

Public Testimony-None

MOTION

Approved as submitted (Oi, Gomes). 5-Ayes: Case, Gon, Gomes, Oi, Yuen.

08.23.2019(1)/00:04:53

ITEM M-1 Issuance of a Revocable Permit for Space to Store a Rubbish Bin, Ralph S. Inouye Co., Ltd., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 001 (Portion).

ITEM M-2 Issuance of a Revocable Permit for Preferred Hold rooms, Located at Gate G7 and G8 of Terminal 2, Southwest Airlines Co., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 001 (Portion).

ITEM M-3 Issuance of a Revocable Permit for Aircraft Parking, Charles W. Petrie III, Hilo International Airport, Tax Map Key: (3) 2-1-12: 090 (Portion).

Ross Smith, DOT-Airports, presented Items M-1, M-2 and M-3.

Board Discussion

Item M-2 is that where they are now? Smith replied yes. This is preferential, and they will have the option to use this gate first.

Public Testimony-None

MOTION

Approved as submitted (Oi, Gon) 4-Ayes: Case, Gon, Oi, Yuen.

08.23.2019(1)/00:11:55

ITEM D-1 Amend Prior Board Action of May 11, 2018, Item D-1, *Amend Prior Board Action of July 28, 2017, Item D-10, Consent to Assignment of Fifty Percent (50%) Interest in Ficker & Hunt, a Hawaii Partnership, also known as Ficker & Hunt Partnership, Lessee under General Lease No. S-4649, from Albert Ficker, Assignor, to Chester Hunt, Assignee; Acknowledgment that Lessee under General Lease No. S-4649 Will Thereby Become Chester Hunt, as Tenant in Severalty; Kekaha, Waimea, Kauai, Tax Map Key: (4) 1-3-008:003;*

The purpose of the amendment is to: (i) delete the portion of the Board approval stating that Chester Hunt will become the lessee under the lease, and instead confirm that the lessee will remain Ficker and Hunt, a Hawaii Partnership; and (ii) address the effect of a March 20, 1995 Extension of General Lease No. S-4649 (1995 Extension), and to specify that even though the extension incorporated a lease assignment premium provision

into the lease, that provision and others in the 1995 Extension are unenforceable because they constitute an improper amendment of a public auction lease. Staff recommends an Amendment of the 1995 Extension to Eliminate all Terms and Conditions Therein That Are Inconsistent with General Lease No. S-4649 as Sold at Public Auction (except for the increase in the duration of the lease);

After-the-fact Consent to Sublease under General Lease No. S-4649, Ficker & Hunt, a Hawaii Partnership, Sublessor, to United States Postal Service, Sublessee; Approve 20-Year Extension of Lease Term, General Lease No. S-4649, Ficker & Hunt, a Hawaii Partnership, Lessee; Kekaha, Waimea, Kauai, Tax Map Key: (4) 1-3-008:003.

The purpose of this amendment is to replace the Board-approved Recommendation in item 4b with "b. Ficker & Hunt, a Hawaii Partnership, shall complete the improvements as proposed and submit to Land Division staff receipts verifying payment for the improvements by December 31, 2019, or the lease extension shall be subject to cancellation;". This amendment will extend the deadline for the completion of the proposed improvements to give the Lessee more time.

Russell Tsuji, Land Division, provided a summary for this item.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Oi, Gomes) 5-Ayes: Case, Gon, Gomes Oi, Yuen.

08.23.2019(1)/00:13:20

ITEM D-2 Authorization of Sale of Lease at Public Auction for Business and/or Commercial Purposes, Hanapepe Town Lots, Waimea, Kauai, Tax Map Key: (4) 1-9-005:007.

Russell Tsuji, Land Division, provided an amendment to Item D-2.

Board Discussion

The Board ask for clarification regarding the status of the current RP holder, if they will be able stay on the property until the Lease has been assigned. Tsuji replied yes.

Public Testimony-None

Amendment:

The text of the submittal was amended: (1) on page 2, the section on the Commencement Date, deleted "**The date of sale if the current occupant is the successful bidder, otherwise,**" to read "**Sixty (60) days after the date of**

sale; provided that if such date is not on the first day...” and (2) top of page 4, last sentence of first paragraph, deleted “Once the lease is acquired, should the successful bidder desire to change the use materially from the use made by the permittee under the RPS-7848, the successful bidder will be responsible...”

MOTION

Approved as amended (Oi, Gon) 5-Ayes: Case, Gon, Gomes Oi, Yuen.

08.23.2019(1)/00:16:50

ITEM L-1 Appointment of Shawn Aguiar to Serve as a Director of the Hamakua Soil and Water Conservation District.

ITEM L-2 Appointment of Darren Strand to Serve as Director of the Central Maui Soil Conservation District.

Allyson Yim, Engineering, presented Items L-1 and L-2.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gon Gomes) 5-Ayes: Case, Gon, Gomes Oi, Yuen.

08.23.2019(1)/00:18:05

ITEM K-1 Conservation District Use Application (CDUA) OA-3841 and Proposed Issuance of a Non-Exclusive Easement for the Sand Island Wastewater Treatment Plant Outfall Shoreline Revetment Project by the City and County of Honolulu Department of Environmental Services, Honolulu Hawaii, Tax Map Key: (1) 1-5-041: Portions of 003 and 006.

Sam Lemmo, Office of Conservation and Coastal Lands presented the submittal.

Board Discussion

The Board asked how is this revetment going to affect the shoreline and what kind of issues we may have? Lemmo replied that Sand Island is all fill and there is no recreational beach, it will be affected by seal level rise.

Does the public have ingress/egress? Lemmo replied that the area is not conducive to recreational activities at the shoreline.

Public Testimony-None

MOTION

Approved as submitted (Gon, Gomes) unanimous.

08.23.2019(1)/00:30:20

ITEM C-1 Request for approval of the Supplemental Environmental Impact Statement for the Auwahi Wind Energy project on the Island of Maui, Hawai'i, Tax Map Key: (2) 1-9-001:006.

The Proposed Supplemental Environmental Impact Statement for the Auwahi Wind Energy Project can be reviewed at:

http://oeqc2.doh.hawaii.gov/EA_EIS_Library/2019-08-08-MA-FSEIS-Auwahi-Wind-HCP-Amendment.pdf.

Dave Smith, Division of Forestry and Wildlife, summarized the submittal.

Board Discussion

Member Gomes recused from Items C-1 and C-2. There was discussion regarding reversion in the EIS and the table regarding the Tiers.

Public Testimony-None

MOTION

Approved as submitted (Yuen, Gon) 5-Ayes, Case, Gon, Oi, Roehrig, Yuen.

ITEM C- 2 Request for approval of amendments to the Incidental Take License and Habitat Conservation Plan for the Auwahi Wind Energy project on the Island of Maui, Hawai'i, Tax Map Key: (2) 1-9-001:006.

Dave Smith, Division of Forestry and Wildlife, summarized the submittal.

Member Gomes recused himself from Item C-2.

Board Discussion

The Board had concerns regarding a comment in the draft regarding reversion clause. Smith referred to the Auwahi Wind HCP Amendment, Requirements and Issuance Criteria table.

Applicant Marilyn Teague provided an overview of the HCP (Habitat Conservation Plan). Provided information on offsite habitat that will be located on Ulupalakua Ranch.

There was further discussion on adaptive strategies and mitigation measures. Matt Stelmach, Tetra Tech, provided information on current studies that have not been released yet.

Public Testimony-None

Amendment:

Add the following condition to the incidental take License and modify Section 7.4.1.6 from the Habitat Conservation plan:

If, during the permit term, DOFAW determines that reliable scientific evidence shows that a commercially-available bat deterrent technology will be effective in reducing the take of ōpe‘ape‘ a, at this site, at a reasonable cost considering the expected reduction in take, DOFAW shall require the Applicant to implement the technology after consultation with the Applicant and ESRC. Without Limitation on other means of determining whether the cost is reasonable, it shall presumptively be considered reasonable if the cost per bat expected to be saved does not exceed the per-bat mitigation cost (\$50,000 per bat). In case of a disagreement between Applicant and DOFAW over the implementation of this condition, the matter shall be brought to the ESRC for its review and recommendation, then to the Board for final decision.

MOTION

Approved as amended (Yuen, Gon) 5-Ayes, Case, Gon, Oi, Roehrig, Yuen. unanimous.

08.23.2019(1)/00:56:41

ITEM J-1 Request approval to initiate Rule-Making Proceedings, including Public Hearing, to Amend Title 13, Hawai'i Administrative Rules (HAR), Section 13-234-26, Passenger Fees to Revise Fee and Charge Requirements and Increase Passenger Cruise-Related Fees.

The Proposed Rules can be reviewed in Person at a Division of Boating and Ocean Recreation (DOBOR) District Office From 8:00 AM To 3:30 PM, Monday through Friday, except State Holidays as follows: Hawai'i District: Honokōhau Small Boat Harbor, 74-380 Kealahou Parkway, Kailua-Kona, Hawaii 96740; Kaua'i District: Nawiliwili Small Boat Harbor, 2494 Niumalu Road, Līhu'e, Hawaii 96766; Maui District: Ma'alaea Small Boat Harbor, 101 Ma'alaea Boat Harbor Road, Wailuku, Hawaii 96793; O'ahu District: Ke'ehi Small Boat Harbor, 4 Sand Island Access Road Honolulu, Hawaii 96819.

The Proposed Rules can be reviewed online at: <http://itgov.hawaii.gov/the-office/administrative-rules>. The Proposed Rules can also be viewed online at: <http://dlnr.hawaii.gov/dobor/draft-rules>.

Location and Contact Information for DOBOR Offices is available online at: <http://dlnr.hawaii.gov/dobor/contact>.

Ed Underwood, Division of Boating and Ocean Recreation, presented the submittal.

Board Discussion

The Board asked to hear public testimony first.

Public Testimony

Charlie Toguchi, Hawaii Representative for Cruise Line International Cruise Association, stands by his written submittal.

There was a robust discussion regarding fees and if the Federal Commerce Clause affects the fees. The Board asked the AG to provide a legal opinion.

Amendment:

Attorney General to provide a legal opinion in writing by the time this item comes back to the Board for decision making after public hearing have been held on the Commerce Clause.

MOTION

Approved as amended (Yuen, Gon) unanimous.

11:16 am: Break

11:30 am: Back in Session

08.23.2019(2)/00:00:03

ITEM J-8 Approval of an Offshore Mooring, After-The-Fact, for Kailua Bay, Kailua-Kona, Island of Hawaii, Hawaii, for Bill Busters Charters, Inc.

and

Declare an Existing Offshore Mooring Exempt from Requirements of Chapter 343, Hawaii Revised Statutes, And Title 11, Chapter 200, Hawaii Administrative Rules

Ed Underwood, DOBOR presented the submittal.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Roehrig, Gomes) unanimous.

08.23.2019(2)/00:00:03

ITEM D-3 Cancellation of Revocable Permit No. S-7865 (RP S-7865) to Kapaa Ki-Aikido Club, Inc. and Waiver of Phase I Environmental Site Assessment Required under RP S-7865; Issuance of Direct Lease to Hawaii Ki Federation for Clubhouse Purposes; Wailua, Kawaihau (Puna), Kauai, Tax Map Key: (4) 4-1-009:018

Russell Tsuji, Land Division, presented the submittal.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Oi, Gon) unanimous.

08.23.2019(2)/00:02:18

ITEM D-4

Amend Prior Board Actions of February 22, 2019, Agenda Item D-1, *Amend Prior Board Action of May 22, 2015, Agenda Item D-3, Grant of Perpetual, Non-Exclusive Easement to A. Laurel Bennett, Trustee of the A. Laurel Bennett Trust for Access and Utility Purposes, Waioli, Hanalei, Kauai, Tax Map Keys: (4) 5-5-008:002 and (4) 5-6-002:001*; and of May 22, 2015, Agenda Item D-3, *Grant of Perpetual, Non-Exclusive Easement to A. Laurel Bennett, Trustee of the A. Laurel Bennett Trust for Access and Utilities Purposes, Waioli, Hanalei, Kauai, Tax Map Keys: (4) 5-5-008:002 and (4) 5-6-002:001*. The purpose of the amendment is to change the easement area referenced in the prior Board action from 19,028 square feet, more or less, to 25,376 square feet, more or less, as determined by survey.

The purpose of this amendment is to delete all references relating to utility purposes as the easement shall be used for access purposes only.

Russell Tsuji, Land Division, presented the submittal.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Oi, Roehrig) unanimously.

08.23.2019(2)/00:04:41

ITEM J-2

Consent to Sublease under Harbor Lease No. H-82-4, GKM, Inc., Sublessor, to Goose's Edge, Inc., Sublessee, for the purposes of General Repair and Maintenance Services for vessels, not to include any retail sales of any kind and repair services for Fisher Panda Generators. Honokohau Small Boat Harbor, Kailua-Kona, Hawaii, Tax Map Key: (3) 7-4-008:042 (Portion).

Richard Howard, Division of Boating and Recreation, presented the submittal.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Roehrig, Gon) unanimous.

08.23.2019(2)/00:06:37

ITEM J-3 Amend prior Board action of February 9, 2018, Item J-12, Board approval to authorize Public Auction of a Lease for Purposes of Landscaping, Maintenance, Storage of Small Boats and Trailers and other Maritime related activities at Mala Wharf and Surrounding areas, Alamihi, Lahaina, Maui, Hawaii, Tax Map Key: (2) 4-5-005:019 (Portion).

The purpose of this amendment is to specify the Term, the Upset Base Rent and Gross Percentage Rent, and Rent Reopenings; and to clarify there will be no required improvements to the property and allow the Caretaker to reside on the premises.

Richard Howard, Division of Boating and Recreation, presented the submittal.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gomes, Oi) unanimous.

08.23.2019(2)/00:05:18

ITEM J-4 Issuance of a Right-Of-Entry Permit to EAS Enterprises, LLP, DBA AVP (Association of Volleyball Professionals), for Beach Activities purposes from September 12, 2019, to September 25, 2019, on Portions of Fort DeRussy Beach and Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, Tax Map Keys: (1) 2-3-037:021 (Portion) and 2-6-005: seaward of 001 and 006.

and

Declare Projects Exempt from requirements of Chapter 343, HRS and Title 11, Chapter 200, Hawaii Administrative Rules.

Richard Howard, Division of Boating and Recreation, presented the submittal. Noted that Applicant sent in written testimony asking to pay the same rent as last year.

Board Discussion

There was a discussion regarding the fee for per square foot. Land charges 10-cents for unencumbered lands and DOBOR charges 25-cents.

Public Testimony-None

Amendment:

Accept the applicant's offer of \$62,160.00.

MOTION

Approved as amended (Yuen, Roehrig) unanimous.

08.23.2019(2)/00:18:20

ITEM J-5 Continuation of Revocable Permit No. 52 to John's World Famous Hawaii Hot Dogs, LLC., for a Mobile Food Concession, located at the Ala Wai Small Boat Harbor, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:012 (Portion).

and

Declare the Project Exempt from requirements of Chapter 343, HRS and Title 11, Chapter 200, Hawaii Administrative Rules.

Richard Howard, Division of Boating and Recreation, presented the submittal.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gon, Oi) unanimous.

08.23.2019(2)/00:19:20

ITEM J-6 Continuation of Revocable Permits to Anela Kai Catamarans, Inc., Island Beach Activities, Inc., Kepoikai, Ltd., King Parsons Enterprises, Ltd., Welakahao Catamaran, Inc., and Woodbridge Inc., for the purpose of placing Permanent Anchors in the Beach to secure the vessels for embarking and disembarking Passengers on Waikiki Beach. (See **Exhibit A** attached).

and

Declare Projects Exempt from requirements of Chapter 343, HRS and Title 11, Chapter 200, Hawaii Administrative Rules.

Richard Howard, Division of Boating and Recreation, presented the submittal.

Board Discussion

The Board wanted to know there have been any issues? Howard replied, not that he is aware of. Why does this not go out to bid? Howard replied, that these are the only Catamaran's on Waikiki Beach who have commercial licenses. There was discussion on appraisal and if they were compliant with signage on the beach.

Public Testimony-None

MOTION

Approved as submitted (Gon, Oi) unanimous.

08.23.2019(2)/00:22:48

ITEM D-5 Annual Renewal of Revocable Permits on the Island of Oahu. See Exhibit 2 for list of Revocable Permits.

Barry Cheung and Andrew Tellio, Land Division, presented the submittal. They addressed OHA's concern's and made an amendment to Exhibit 2.

Board Discussion-None

The Board and Cheung, discussed OHA's concerns.

Public Testimony-None

Amendment:

Exhibit 2, (1) RP 5408 by correcting the Tax Map Key number to read "(1) 4-1-001-011" and (2) RP 5557 by adding "\$43,794.96" to the column on the proposed 2020 rent.

MOTION

Approved as amended.

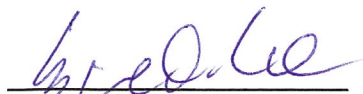
There being no further business, Member Gomes, adjourned the meeting at 12:33 pm. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and available for review. Certain Items on the agenda were taken out of sequence to accommodate applicants or interest parties present.

Respectfully submitted,



Darlene S. Ferreira
Land Board Secretary

Approved for submittal:



Suzanne D. Case
Chairperson
Department of Land & Natural Resources